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15  
16 **BEFORE THE**  
17 **RESPIRATORY CARE BOARD**  
18 **DEPARTMENT OF CONSUMER AFFAIRS**  
19 **STATE OF CALIFORNIA**

20 In the Matter of the Accusation Against:

Case No. 1H 2008 493

21 ODETTE MARTINEZ

22 5736 Fair Avenue, Apt. #B

23 North Hollywood, California 91601

24 Respiratory Care Practitioner License No. 26138

25 Respondent.

26 **A C C U S A T I O N**

27 Complainant alleges:

28 PARTIES

1. Stephanie Nunez (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about April 12, 2007, the Board issued Respiratory Care Practitioner License Number 26138 to Odette Martinez (Respondent). This license was in full force and effect at all times relevant to the charges brought herein and will expire on May 31, 2010, unless renewed.

JURISDICTION

1                   3.       This Accusation is brought before the Board under the authority of the  
2 following laws. All section references are to the Business and Professions Code (Code) unless  
3 otherwise indicated.

4                   4.       Section 3710 of the Code states: “The Respiratory Care Board of  
5 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter  
6 8.3, the Respiratory Care Practice Act].”

7                   5.       Section 3718 of the Code states: “The board shall issue, deny, suspend,  
8 and revoke licenses to practice respiratory care as provided in this chapter.”

9                   6.       Section 3750 of the Code states:

10                   “The board may order the denial, suspension or revocation of, or the imposition of  
11 probationary conditions upon, a license issued under this chapter, for any of the following  
12 causes:

13                   “ . . .

14                   “(d) Conviction of a crime that substantially relates to the qualifications,  
15 functions, or duties of a respiratory care practitioner. The record of conviction or a  
16 certified copy thereof shall be conclusive evidence of the conviction.

17                   “ . . .

18                   “(j) The commission of any fraudulent, dishonest, or corrupt act which is  
19 substantially related to the qualifications, functions, or duties of a respiratory care  
20 practitioner.

21                   “ . . . ”

22                   7.       Section 3752 of the Code states:

23                   “A plea or verdict of guilty or a conviction following a plea of nolo contendere  
24 made to a charge of any offense which substantially relates to the qualifications,  
25 functions, or duties of a respiratory care practitioner is deemed to be a conviction within  
26 the meaning of this article. The board shall order the license suspended or revoked, or  
27 may decline to issue a license, when the time for appeal has elapsed, or the judgment of  
28 conviction has been affirmed on appeal or when an order granting probation is made

1 suspending the imposition of sentence, irrespective of a subsequent order under Section  
2 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to  
3 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the  
4 accusation, information, or indictment.”

5 8. California Code of Regulations, Title 16, section 1399.370, states:

6 “For the purposes of denial, suspension, or revocation of a license, a crime or act  
7 shall be considered to be substantially related to the qualifications, functions or duties of  
8 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to  
9 perform the functions authorized by his or her license or in a manner inconsistent with the  
10 public health, safety, or welfare. Such crimes or acts shall include but not be limited to  
11 those involving the following:

12 “ . . .

13 “(b) Conviction of a crime involving fiscal dishonesty, theft or larceny.

14 “ . . . .”

#### 15 COST RECOVERY

16 9. Section 3753.5, subdivision (a) of the Code states:

17 "In any order issued in resolution of a disciplinary proceeding before the board,  
18 the board or the administrative law judge may direct any practitioner or applicant found to  
19 have committed a violation or violations of law to pay to the board a sum not to exceed  
20 the costs of the investigation and prosecution of the case."

21 10. Section 3753.7 of the Code states:

22 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall  
23 include attorney general or other prosecuting attorney fees, expert witness fees, and other  
24 administrative, filing, and service fees."

25 11. Section 3753.1, subdivision (a) of the Code states:

26 "An administrative disciplinary decision imposing terms of probation may  
27 include, among other things, a requirement that the licensee-probationer pay the monetary  
28 costs associated with monitoring the probation."

1 FIRST CAUSE FOR DISCIPLINE

2 (Conviction of a Crime)

3 12. Respondent is subject to disciplinary action under sections 3750,  
4 subdivision (d), and 3752 of the Code, and California Code of Regulations, Title 16, section  
5 1399.370, subdivision (b), in that she was convicted of a crime substantially related to the  
6 qualifications, functions or duties of a respiratory care practitioner. The circumstances are as  
7 follows:

8 A. On or about August 16, 2008, Los Angeles Police officers responded to a  
9 radio call that a loss prevention officer was holding theft suspects at a Walmart store in  
10 West Hills, California. The loss prevention agent had observed two female suspects  
11 walking around the lingerie department of the store. Respondent was pushing a shopping  
12 cart which contained an open cardboard box. The two suspects selected merchandise and  
13 put the items in the shopping cart. Respondent then broke the hangars of the merchandise  
14 and concealed the items in the open cardboard box. Respondent selected duct tape from  
15 the stationary department, and taped the cardboard box closed with the concealed items  
16 inside. Both suspects proceeded to the front cash registers and paid for some other items  
17 in the shopping cart. They exited the Walmart store, failing to pay for the items  
18 concealed inside the cardboard box. The Walmart security officer stopped the suspects,  
19 and placed them under private person's arrest until the police officers arrived.  
20 Respondent was arrested for petty theft with a prior conviction. The total cost of the  
21 stolen merchandise was \$155.80.

22 B. On or about August 20, 2008, in Los Angeles County Superior Court  
23 Complaint No. 8PY05039, Respondent was charged with petty theft with a prior  
24 conviction, in violation of Penal Code sections 666 and 484, subdivision (a), a  
25 misdemeanor. Respondent had a prior conviction on January 30, 1998, for theft of  
26 property.

27 C. On or about September 11, 2008, Respondent was convicted upon her plea  
28 of nolo contendere to petty theft and petty theft with a prior conviction; she also admitted

1 her prior conviction. She was placed on probation for two years on a number of terms  
2 and conditions, including: serve one day in county jail (with credit for one day); pay fines  
3 of \$133.00; perform 100 hours of community service; and stay away from Walmart.

4 SECOND CAUSE FOR DISCIPLINE

5 (Commission of a Fraudulent, Dishonest or Corrupt Act)

6 13. Respondent is subject to disciplinary action under section 3750,  
7 subdivision (j), of the Code, in that she committed a fraudulent, dishonest or corrupt act  
8 substantially related to the qualifications, functions, or duties of a respiratory care practitioner.  
9 The facts and circumstances, set forth in above Paragraph 12 of this Accusation, are incorporated  
10 herein by reference.

11 DISCIPLINE CONSIDERATIONS

12 14. To determine the degree of discipline, if any, to be imposed on  
13 Respondent, Complainant alleges that on or about January 30, 1998, in a prior criminal  
14 proceeding in Los Angeles County Superior Court Complaint No. 8JM01356, Respondent was  
15 convicted upon her plea of guilty to theft of property, in violation of Penal Code section 484,  
16 subdivision (a), a misdemeanor. The record of this criminal proceeding is incorporated as if fully  
17 set forth.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
3 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

4 1. Revoking or suspending Respiratory Care Practitioner License Number  
5 26138 issued to Odette Martinez;

6 2. Ordering Odette Martinez to pay the Respiratory Care Board the costs of  
7 the investigation and enforcement of this case, and if placed on probation, the costs of probation  
8 monitoring; and

9 3. Taking such other and further action as deemed necessary and proper.

10 DATED: March 9, 2009

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13 Original signed by Colleen Whitestine for:  
14 STEPHANIE NUNEZ  
15 Executive Officer  
16 Respiratory Care Board of California  
17 Department of Consumer Affairs  
18 State of California  
19 Complainant  
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